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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/282,879	03/31/1999	SUBROTO CHATTERJEE	46906-2-DIV	9227

7590 11/15/2001

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EXAMINER

RAO, MANJUNATH N

ART UNIT

PAPER NUMBER

1652

DATE MAILED: 11/15/2001

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)
	09/282,879	CHATTERJEE, SUBROTO
	Examiner	Art Unit
	Manjunath N Rao	1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 October 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) The period for reply expires 3 months from the mailing date of the final rejection.

b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. The proposed amendment(s) will not be entered because:

- (a) they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) they raise the issue of new matter (see Note below);
- (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. Applicant's reply has overcome the following rejection(s): _____.

4. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached.

6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 13-17.

Claim(s) withdrawn from consideration: _____.

8. The proposed drawing correction filed on _____ is a) approved or b) disapproved by the Examiner.

9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.

10. Other:

Advisory Action

1. Continuation of 2. NOTE: Inclusion of SEQ ID NO:2 in claim 13 at this stage in the prosecution requires a new search.

Item No. 5

2. The request to reconsidered has been considered by the Examiner. However, as the above amendment has not been entered all previous rejections are maintained for reasons of record.

In response to the previous Office action applicants traverse the rejection of claims 13-17 under USC 35, 103(a) arguing that the combination of references is not the claimed invention. Applicants quote *In re Deuel* and *In re Bell* and argue that disclosure of a protein sequence does not necessarily render particular DNA molecules encoding the protein obvious and that Office has not reached the threshold addressed by *Deuel*. Examiner respectfully disagrees. Applicant's argument taking support from *Deuel* or *Bell* is highly misplaced. This is because applicants are not claiming a method based on DNA sequence. While Examiner agrees that disclosure of a protein sequence does not necessarily render particular DNA molecules encoding the protein obvious, Examiner would like to point out that applicant's claims are directed to recombinant polypeptide and thus cannot apply the decision of *In re Deuel* or *Bell*. Therefore, as argued in the previous Office action the above invention continues to be obvious in view of the references cited by the Examiner. Hence the above rejection is maintained.

Rheem Lind
FEBRUARY 2003
160